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Attorneys for Defendants, Dr. Lori Bennett, in her individual and official capacities as President of Clovis Community College, Marco J. De La Garza, in his individual and official capacities as Vice President of Student Services at Clovis Community College, Gurdeep Hebert, in her individual capacity and official capacities as Dean of Student Services at Clovis Community College; Patrick Stumpf, in his individual and official capacities as Senior Program Specialist at Clovis Community College

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALEJANDRO FLORES;
DANIEL FLORES;
JULIETTE COLUNGA; and
YOUNG AMERICANS FOR FREEDOM AT
CLOVIS COMMUNITY COLLEGE,

Plaintiffs,

v.

Dr. Lori Bennett, in her individual and official capacities as President of Clovis Community College;

Marco J. De La Garza, in his individual and official capacities as Vice President of Student Services at Clovis Community College;

Gurdeep Hebert, in her individual capacity and official capacities as Dean of Student Services at Clovis Community College;

Case No. 1:22-CV-01003-JLT-HBK

**NOTICE OF MOTION AND MOTION TO
STRIKE PLAINTIFF'S COMPLAINT**

ORAL ARGUMENT REQUESTED

Date:
Time:
Judge:

Complaint Filed: 08/11/2022

Patrick Stumpf, in his individual and official capacities as Senior Program Specialist at Clovis Community College,

Defendants.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on the above date and time, or as soon thereafter as the matter can be heard in in the courtroom of the Honorable Judge Jennifer L. Thurston of the United States District Court for the Eastern District of California, located at 2500 Tulare St Fresno, CA, Defendants DR. LORI BENNETT, MARCO J. DE LA GARZA, GURDEEP HEBERT and PATRICK STUMPF will, and hereby do, move for an Order to strike Punitive damages throughout the complaint as it relates to Defendants DR. LORI BENNETT, MARCO J. DE LA GARZA, GURDEEP HEBERT and PATRICK STUMPF.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, the pleadings and records on file in this matter, and on any evidence, including oral and documentary evidence, if any, that may be presented at any later point including the hearing on the motion, and any such further matters as the Court deems appropriate.

Dated: September 1, 2022

DeMaria Law Firm, APC

By: _____/s/

Anthony N. DeMaria

Attorneys for Defendants, Dr. Lori Bennett, in her individual and official capacities as President of Clovis Community College, Marco J. De La Garza, in his individual and official capacities as Vice President of Student Services at Clovis Community College, Gurdeep Hebert, in her individual capacity and official capacities as Dean of Student Services at Clovis Community College; Patrick Stumpf, in his individual and official capacities as Senior Program Specialist at Clovis Community College

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Gurdeep Hebert, in her individual capacity and

Case No. 1:22-CV-01003-JLT-HBK

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE PUNITIVE
DAMAGES**

Date:
Time:
Judge:

Complaint Filed: 08/11/2022

1 official capacities as Dean of Student Services
2 at Clovis Community College;

3 Patrick Stumpf, in his individual and official
4 capacities as Senior Program Specialist at
5 Clovis Community College,

Defendants.

6 **I.INTRODUCTION**

7
8 In the present case, the Plaintiffs' Complaint alleges the violation of the Plaintiffs' First
9 Amendment free speech rights by the Defendants. Moreover, Plaintiffs have improperly asserted
10 punitive damages against the Defendants who were all state actors performing in their official
11 capacity.

12 Therefore, the Plaintiffs' Complaint is incurably implausible, speculative, and contains other
13 substantial flaws. As explained below, it should be dismissed without leave to amend pursuant to
14 Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6).

15 **II. FACTUAL BACKGROUND**

16 Clovis Community College ("The College") is a site operation name for State Center
17 Community College District ("SCCCD"), a public entity, which is governed by an elected Board of
18 Trustees, and as such is entitled to create policies relating to the postings on the walls within its own
19 instructional building. The College has a non-public form on its interior walls which is subject to The
20 Colleges' posting policies and SCCC'D's AR 5550. Outside in there is a free speech kiosk which is not
21 regulated by these policies. This case revolves around a few flyers that were temporarily declined
22 because they did not adhere to SCCC'D and The College's policy regarding posting material on school
23 property. The College has set guidelines both from the school itself and SCCC'D, which provide clear
24 instruction on when and how flyers, including requiring be related to a student active and club, can be
25 posted and information that the school is not a public forum. The College posting policy clearly states
26 how many flyers can be put up by a club or individual, where the flyers can be posted, and how the
27 flyers should be posted. The policy also states that any flyer that is not approved will be removed.
28 (Dec.of Dr. Lori Bennett "LB" Ex. B; Request for Judicial Notice ("RJN") ¶3). Additionally, SCCC'D

1 has its own policy for time, place, and manner restriction of speech. In SCCCD's policy it clearly states
2 that the colleges of the district are non-public forums. (Dec. of LB Ex. "A"; RJN ¶3.)

3 This posting policy has been in place, and Plaintiffs utilized the procedure multiple times. (See
4 Dec. of Patrick Stumpf ¶s 6 and 8, RJN ¶3.) However, on the occasion relating to the pro-life posters
5 Plaintiffs failed to comply with the posting policy and were not permitted to post these files in The
6 College's hallways, on or about December 1, 2021. (Dec. Gurdeep Herbert "GH" ¶10; RJN ¶3.) Later,
7 Plaintiffs submitted new pro-life flyers which conformed to the posting policies and were permitted to
8 be posted as it connected to a school club activity. (Id. at ¶s 13-14; RJN ¶.) The areas that Plaintiffs
9 sought to use for posting were inside of a school building which classrooms, which are not a free
10 speech forums, Plaintiffs were informed of the status of the interior walls and received the explanation
11 that the postings would be directly attributable to The College as if it was The College's own message.
12 (Dec. GH Ex. "B"; RJN ¶3.)

13 Furthermore, Plaintiffs' have named several individuals who were not decision makers in
14 creating the SCCCD policy; several of the defendants including Gurdeep Herbert, Patrick Stumpf,
15 and Marco De La Garza, did not have any decision making ability when it came to the SCCCD posting
16 policy itself. (Dec. of GH ¶4, Declaration of PS ¶ 4, and Declaration of MG ¶4 ;RJN ¶3.) These
17 individuals were simply functioning as employees attempting to fully comply with the SCCCD policy
18 which they were required to abide by, and did so by communicating with counsel to ensure that their
19 actions were proper to the best of their ability. (Dec. of GH ¶11 and Dec of MG ¶ 7;RJN ¶3.) For Dr.
20 Bennett, she contacted general counsel for SCCCD and follow the instruction of General counsel for
21 instruction on following posting on non-public forums in school forums. (Dec. of LB ¶8; RJN ¶3.)

22 **III. ARGUMENT**

23 **A. PLAINTIFFS HAVE FAILED TO DEMONSTRATE JURISDICTION.**

24 **1. DEFENDANTS ARE IMMUNE FROM CLAIMS UNDER THE ELEVENTH AMENDMENT.**

25 In the given case Defendants Dr. Lori Bennett, the President of Clovis Community College, Marco
26 De La Garza, the Vice President of Student Services at Clovis Community College Gurdeep Hebert,
27 Dean of Student Services at Clovis Community College, Patrick Stumpf, Senior Program Specialist
28 for the Student Activities Office at Clovis Community College, acted only in their official capacities

1 in upholding the Clovis Community College and its policies adopted and approved by the Clovis
2 Community College Board of Trustees.

3 As was established in *Wells v. Bd. of Trustees of California State Univ.* State university and its
4 officers, acting in their official capacity, were entitled to Eleventh Amendment immunity from §
5 1983 claims. In *Wells* former university track coach, who sought monetary relief and punitive
6 damages for alleged retaliation based on his exercise of free speech rights. U.S.C.A. Const.Amends.
7 1, 11; 42 U.S.C.A. § 1983. The Court held that CSU and its officers acting in their official capacity
8 are entitled to Eleventh Amendment immunity from § 1983 actions: “Defendant CSU is an
9 instrumentality of the State of California. *Jackson v. Hayakawa*, 682 F.2d 1344, 1349–50 (9th
10 Cir.1982). Thus, CSU and its officers acting in their official capacity are entitled to Eleventh
11 Amendment immunity from § 1983 actions.” *Wells v. Bd. of Trustees of California State Univ.*, 393
12 F. Supp. 2d 990 (N.D. Cal. 2005).

13 **2. DAMAGES IN A 42 U.S.C. § 1983 SUIT ARE UNAVAILABLE AGAINST STATE OFFICIALS.**

14 In the present case Plaintiffs seek to obtain punitive damages against Defendants in the
15 official and individual capacities. However, as was held in *Wells* punitive damages are not available
16 in suits under § 1983 against government entities. 42 U.S.C.A. § 1983. *Wells v. Bd. of Trustees of*
17 *California State Univ.*, 393 F. Supp. 2d 990 (N.D. Cal. 2005). Here, Defendants acted as College
18 officials when they investigated Plaintiffs’ postings for the College-sponsored bulletin boards in the
19 internal hallways of the Clovis Community College. In essence, Defendants acted on behalf of the
20 State as explained below.

21 **3. DEFENDANTS ACTED ON BEHALF OF THE STATE.**

22 Defendants in the present case were not final policy makers as all State Center Community
23 College District’s policies were adopted and approved by the Board of Trustees. In *McMillan v.*
24 *Monroe County, Alabama*, 520 U.S. 781 (1997), the Supreme Court articulated the parameters for
25 determining whether local governmental officials are final policy makers for the local government,
26 or instead represent the State and qualify for Eleventh Amendment Immunity. *McMillian v. Monroe*
27 *Cty., Ala.*, 502 U.S. 781, 785 (1997). Two principles guide the inquiry: (i) “whether governmental
28 officials are final policymakers for the local government in a particular area, or on a particular issue,”

1 and (ii) “the definition of the official’s functions under relevant state law.” *Id.* at 785-86. In the
 2 aforementioned case in determining whether sheriffs act on behalf of the county or the state, the
 3 Ninth Circuit has focused on whether sheriffs act pursuant to County developed policies, or whether
 4 the challenged conduct is simply the execution of state law. *See, e.g., Cortez v. City of Los Angeles*,
 5 294 F.3d 1186 (9th Cir. 2002).

6 The Ninth Circuit additionally explained in *Weiner* that, when a county official acts on
 7 behalf of the State, the real actor is the State.” *Weiner v. San Diego Cnty.*, 210 F.3d 1025 (9th
 8 Cir. 2000).

9 **4. PUNITIVE DAMAGES ARE UNAVAILABLE AGAINST DEFENDANTS.**

10 It is well established that state officials acting in their official capacities are also immune
 11 from punitive damages. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105
 12 L.Ed.2d 45 (1989); *Mitchell v. Dupnik*, 75 F.3d 517, 527 (9th Cir.1996).

13 Here, Plaintiffs claim punitive damages against Defendants in their official and individual
 14 capacities. This claim fails for the reasons below.

15 ***a. The Individual Defendants Are All Entitled to Qualified Immunity***

16 Even if this Court determines that Plaintiff’s Complaint does state claims for relief under the
 17 theories alleged, each of the individual Defendants is entitled to qualified immunity, and for this
 18 reason the claims against them should be dismissed without leave to amend. Defendants named in
 19 their individual rather than their official capacities may invoke qualified immunity as a defense.
 20 *Wood v. Strickland*, 420 U.S. 308, 318, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975); *Brandon v. Holt*,
 21 469 U.S. 464, 471-73, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985). The defense of qualified immunity
 22 protects “governmental officials . . . from liability for civil damages insofar as their conduct does
 23 not violate clearly established statutory or constitutional rights of which a reasonable person would
 24 have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct.

25 The issue of qualified immunity is one to be determined by a Court at the earliest possible
 26 stage of litigation. *Anderson v. Creighton*, 483 U.S. 635, 646 n.6. 107 S. Ct. 3034, 97 L. Ed. 2d 523
 27 (1987). As noted by the Ninth Circuit in *Thorsted v. Kelly*, 858 F. 2d 571 (9th Cir., 1988), since
 28

1 qualified immunity is an immunity from suit, "it is essential that 'insubstantial claims' be resolved
 2 as quickly as possible." *Id.* at 575. The qualified immunity test is a two-part inquiry. Initially, the
 3 Court must decide if the facts alleged show the official's conduct violated a constitutional right and
 4 then whether the right was clearly established. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151,
 5 150 L. Ed. 2d 272 (2001). As the Ninth Circuit noted in *Brewster v. Board of Education*, 149 F.3d
 6 971, 977 (9th Cir. 1988), "qualified immunity provides a protection to government officers that is
 7 quite far-reaching. Indeed, it safeguards 'all but the plainly incompetent or those who knowingly
 8 violate the law.'" "[I]f officers of reasonable competence could disagree on th[e] issue [whether a
 9 chosen course of action is constitutional], immunity should be recognized." *Id.* at 977. Moreover,
 10 "[t]he test allows ample room for reasonable error on the part of the [governmental official]." *Id.*
 11 The second step of the analysis examines the defendant's awareness. "[T]he relevant, dispositive
 12 inquiry in determining whether a right is clearly established is whether it would be clear to a
 13 reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S.
 14 at 202.

15 These authorities confirm that the individual Defendants here are entitled to qualified
 16 immunity. When conclusory, blanket assertions of discrimination are set aside, all that is left in the
 17 Complaint allegations as to the Defendants is that they supposedly were to disregard the Policy
 18 adopted by the duly elected College Board of Trustees and allow Plaintiffs' posters which did not
 19 bear any imprimatur to the College. However, as explained in *Harlow* individual officials were
 20 entitled to qualified immunity from civil liability. The doctrine of qualified immunity shields public
 21 officials performing discretionary functions from personal liability under certain circumstances. See
 22 *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). As the
 23 Supreme Court explained in *Anderson v. Creighton*, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523
 24 (1987), "whether an official protected by qualified immunity may be held personally liable for an
 25 allegedly unlawful **official** action generally turns on the 'objective legal reasonableness' of the
 26 action, assessed in light of the legal rules that were 'clearly established' at the time it was taken."
 27 *Id.* at 635, 107 S.Ct. at 3036 (citations omitted) (quoting *Harlow*, 457 U.S. at 818, 819, 102 S.Ct. at
 28 2738, 2738–2739).

1 In the alternative to the qualified immunity argument, punitive damages in a § 1983 action
 2 may be permitted only when the defendant's conduct involves reckless or callous indifference to the
 3 plaintiff's federally protected rights, as well as when it is motivated by evil motive or intent. *Smith*
 4 *v. Wade*, 461 U.S. 30, 30, 103 S. Ct. 1625, 1627, 75 L. Ed. 2d 632 (1983).

5 Neither is the case here as Defendants being a College officials were required by law and
 6 their job function to effectuate the College mission and policies. They did all their required due
 7 diligence and sought legal counsel's advice on the matter. It is hard to imagine any "evil" intent or
 8 motive of their actions.

9 5. THE PLAINTIFF'S HAVE NOT ALLEGED ACTIONS THAT ARE SUFFICIENT FOR
 10 PUNITIVE DAMAGES.

11 Punitive damages are an exceptional damage, and it is a rare case that affords them. This
 12 Complaint alleges violations of 42 U.S.C. 1983, but not for excessive force or violence, and not
 13 against law enforcement. Rather, this Complaint alleges that four employees of Clovis Community
 14 College, a branch of SCCCD, are personally liable for punitive damages as individuals because they
 15 required enforcement of District policy that a poster to go on the wall of the interior of the school
 16 identify the club to which it pertains (Dec. GH Ex. "B"; RJN ¶3). The evidence shows that, when
 17 the club returned with substantially similar pro-life posters a few months later, that did comply with
 18 the policy, they allowed those posters to be posted (Dec. GH ¶13-14; RJN ¶3)

19 These facts do not support the high standard for punitive damages. While, in a section 1983
 20 case, a for conduct that is "a reckless or callous disregard, or indifference to, the rights or safety of
 21 others" (*Smith v. Wade*, 461 U.S. 30, 33 (1983), the cases show that a level of conduct far in excess
 22 of policy arguments are required. In *Dang v. Cross*, 422 F.3d 800 (9th Cir. 2005), the court
 23 addressed the standard for punitive damages in a section 1983 case. Referring to the model
 24 instructions, the 9th Circuit noted that an act is malicious if accompanied by spite, ill will or a grudge
 25 (id. at 805), and is oppressive if it violates plaintiff's rights with "unnecessary harshness or severity",
 26 including "taking advantage of someone weakness, disability of misfortune" of the plaintiff (Id. at
 27 805), or reckless and callous disregard for the safety of another (Id. at 806). The Dang court cited
 28 to *Morgan v. Woessner*, 997 F.2d 1244, 1255 (9th Cir. 1993), where the 9th Circuit held that "a jury

may be permitted to assess punitive damages in an action under section 1983 either when a defendant's conduct was driven by evil motive or intent, or when it involved reckless or callous indifference to the constitutional rights of others".

There is nothing in the pleadings before the court that could remotely rise to such a punitive level as to these four defendants. The defendants merely enforced an SCCCD policy on where and when to post materials on a school wall. The declarations in the court file clearly show that the defendants acted on the advice of their counsel, that they always allowed the postings when the rules were followed, and that AFTER the plaintiffs submitted a pro life flier without the club information, the plaintiffs returned with a very similar pro life flier with the proper club information and were allowed to post the flier. There is no evidence of intentional deprivation or evil ill will, as required by the law. The evidence shows the defendants, all employees, explaining the policy to the plaintiffs and working with them to correct deficiencies in order to allow postings, to find alternative posting sites, and to help them re-post when taken down. While plaintiffs may disagree with the SCCCD policy, there is no basis for punitive damages.

IV. CONCLUSION

The Plaintiffs' Complaint is has improperly asserted punitive damages against Defendants. Defendants respectfully request the punitive damages be struck pursuant to Federal Rule of Civil Procedure 12(f).

1 Dated: September 1, 2022

DeMaria Law Firm, APC

3 By: /s/ Anthony N. DeMaria

4 Anthony N. DeMaria

5 *Attorneys for Defendants, Dr. Lori Bennett, in her*
6 *individual and official capacities as President of*
7 *Clovis Community College, Marco J. De La Garza,*
8 *in his individual and official capacities as Vice*
9 *President of Student Services at Clovis Community*
10 *College, Gurdeep Hebert, in her individual capacity*
11 *and official capacities as Dean of Student Services*
12 *at Clovis Community College; Patrick Stumpf, in*
13 *his individual and official capacities as Senior*
14 *Program Specialist at Clovis Community College*

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Program Specialist at Clovis Community
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Defendants.

Case No.: 1:22-cv-01003-JTL-HBK

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION
TO STRIKE PUNITIVE DAMAGES**

Date: September 23, 2021

Time: 9:00A.M.

Judge: The Honorable Jennifer L. Thurston

COMES NOW, Defendants, Dr. Lori Bennett, Patrick Stumpf, Marco De La Garza, and Gurdeep Hebert (“Defendants”) , and hereby requests this Court take judicial notice, pursuant to Federal Rule of Evidence 201.

Federal Rule of Evidence 201 specifically provides that judicial notice may be taken where “a fact that is not subject to reasonable dispute because it ... (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” (FRE 201(b)(2).)

The instant request is made with respect to specific records of this Court. Thus, the correctness of the following documents are not reasonably subject to dispute and can be immediately and accurately determined by the review of the Court’s own records:

1. Plaintiff’s Complaint for the case entitled *Alejandro Flores; Daniel Flores; Juliette Colunga; and Young Americans For Freedom at Clovis Community Collegev. Dr. Lori Bennett; Marco J. De La Garza; Gurdeep Hebert; and Patrick Stumpf*, United States District Court Eastern District of California Case. No. 1:22-cv-01003-JLT-HBK, filed on or about August 11, 2021, which remains the operative Complaint in this matter.

2. Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction for the case entitled *Alejandro Flores; Daniel Flores; Juliette Colunga; and Young Americans For Freedom at Clovis Community Collegev. Dr. Lori Bennett; Marco J. De La Garza; Gurdeep Hebert; and Patrick Stumpf*, United States District Court Eastern District of California Case. No. 1:22-cv-01003-JLT-HBK, filed on or about September 1, 2021, and all supporting documents.

3. Defendants’ 12(b)(6) Motion for the case entitled *Alejandro Flores; Daniel Flores; Juliette Colunga; and Young Americans For Freedom at Clovis Community Collegev. Dr. Lori Bennett; Marco J. De La Garza; Gurdeep Hebert; and Patrick Stumpf*, United States District Court Eastern District of California Case. No. 1:22-cv-01003-JLT-HBK, filed on or about September 1, 2021, and all supporting documents.

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Dated: September 1, 2022

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